

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,269

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her application for general assistance (GA) for rent and a security deposit to move to a new apartment. The issue is whether the petitioner was faced with a "catastrophic situation" as defined by the pertinent regulations.

FINDINGS OF FACT

The facts are not in dispute. The petitioner lives with her child. Her income consists of child support, unemployment compensation, and part-time employment.⁽¹⁾ On or about July 18, 1993, the petitioner received a letter from her landlords advising her that they intended to renovate the cottage that the petitioner was renting and that the petitioner would have to vacate the premises by August 18, 1993.⁽²⁾

On August 30, 1993, the petitioner had located another place to live and she applied to the Department for GA for the first month's rent and security deposit. The Department denied her application because the petitioner was over-income and was not facing a "catastrophic situation" (see *infra*). After the denial, the petitioner was apparently able to come up with at least some money on her own, and she moved into the new apartment on September 3, 1993. The petitioner claims she still owes her new landlord \$300.00. At the time she moved, the petitioner's former landlords had taken no further action against the petitioner on their notice to vacate. Other than her understandable desire to avoid any further confrontation with her landlords, the petitioner was under no physical or legal restraint from remaining in the cottage where she was living.

The petitioner does not dispute that the Department correctly calculated her income for the thirty days prior to her application for GA. She also admits that in January, 1993, the Department had granted her Emergency Assistance (EA) to pay back rent that she owed her former landlords at that time.

ORDER

The Department's decision is affirmed.

REASONS

The regulations provide that an individual with income in the 30 days prior to application that exceeds the ANFC payment for which the household would be eligible is ineligible for GA unless the household can demonstrate that it is facing a "catastrophic situation". W.A.M. § 2600. A "catastrophic situation" is specifically defined by W.A.M. § 2602, in pertinent part, as follows:

Catastrophic Situations

Any applicant who has exhausted all available income and resources and who has an emergency need caused by one of the following catastrophic situations may have that need which is indeed caused by the catastrophe met within General Assistance standards disregarding other eligibility criteria. Subsequent applications must be evaluated in relation to the individual applicant's potential for having resolved the need within the time which has elapsed since the catastrophe to determine whether the need is now caused by the catastrophe or is a result of failure on the part of the applicant to explore potential resolution of the problem:

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b. A court ordered or constructive eviction due to circumstances over which the applicant had no control. An eviction resulting from intentional, serious property damage caused by the applicant; repeated instances of raucous and illegal behavior which seriously infringed on the rights of other tenants of the landlord or the landlord himself; or intentional and serious violation of a tenant agreement is not considered a catastrophic situation. Violation of a tenant agreement shall not include nonpayment of rent unless the tenant had sufficient financial ability to pay and the tenant did not use the income to cover other basic necessities or did not withhold the rent pursuant to efforts to correct substandard housing.

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Constructive Eviction Defined

Constructive eviction is defined as any disturbance caused by a landlord or someone acting on his behalf, which makes the premises unfit for occupation. The motive for the disturbance, which may be inferred from the act, must have as its intent the eviction of the occupant. No intent needs to be considered when heat or utilities or water are not provided within a reasonable period of time and there is an agreement to furnish these items.

As noted above, other than receiving an initial notice to vacate (albeit, before a date that had already elapsed), the petitioner was not faced with any court action or malevolent act from her landlords either when she applied for GA on August 30, or when she moved on September 3, 1993. Therefore, it cannot be concluded that her situation was "catastrophic" as set forth in the above regulation.

An exception to the above condition of eligibility for assistance is contained in the Department's "rental assistance program" administered under the EA program, whereby a qualified household with minor children can be eligible for assistance to pay back rent or moving expenses in cases in which it is necessary to avoid homelessness. The problem with this program, however, at least from the petitioner's perspective, is that a household cannot be eligible for EA payments for any purpose on more than one occasion within any twelve-month period. W.A.M. § 2800 A. As noted above, the petitioner had received EA benefits (for back rent) in January, 1993. Therefore, she cannot qualify

for those benefits again until January, 1994, at the earliest.⁽³⁾

At the hearing (held on September 16, 1993) the petitioner was advised that if she should be faced with a catastrophic situation in her new apartment, or any other future emergency, she can reapply for GA and have her application decided on the basis of her then-current circumstances. She was also advised to apply for ANFC if her income decreases. However, inasmuch as the Department's decision in her case in this instance was in accord with the pertinent regulations, the board is bound by law to affirm it. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 19.

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1. The petitioner's unemployment compensation is reduced, though not dollar-for-dollar, depending on her employment earnings.
2. The petitioner was behind in her rent at the time but it does not appear that this was the reason her landlords asked her to move out.
3. At the hearing the petitioner maintained that the local community action agency had advised her she was eligible for assistance to move to another place. It appears, however, that the agency was unaware either of the fact that the petitioner had received EA within the last year or that such a provision exists in the regulations. At any rate, regardless of what she may have been told, it is clear that the petitioner did not actually move until after she had applied for and had been denied assistance by the Department.